

REMARKS/ARGUMENTS

Claims 1-27 are pending. Claims 1-27 were rejected under 35 U.S.C. 112, first and second paragraphs, on the grounds that the specification does not provide support for the limitation “the cup holder being *readily* removable from the primary container . . . ” and the limitation is indefinite.

Claims 1-10, 14-17, 19-21, and 24 were again rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,018,904 to Muraoka. Claims 11, 12, 18, and 27 were again rejected under 35 U.S.C. 103(a) as being unpatentable over Muraoka in view of U.S. Patent No. 3,227,273 to Syverson et al. Claims 22, 23, and 25 were again rejected as unpatentable over Muraoka. Claim 26 was rejected as unpatentable over Muraoka in view of Syverson and further in view of U.S. Patent No. 4,134,492 to Lucas.

The § 112 Rejections

Applicant disagrees that the limitation “readily removable” is not supported in the specification. It is implicit that the cup holder is readily removable from the primary container, since it is a clear objective of the package described in the specification for the cup holder to be removable from the primary container, and as such, it would be nonsensical to make it difficult to remove the cup holder from the primary container.

Nevertheless, since “readily” is not necessary for distinguishing over the prior art, Applicant has amended Claim 1 to delete this word. Accordingly, the rejections under § 112 have been overcome.

Rejections Under Section 102

Claims 1-10, 14-17, 19-21, and 24 were rejected as being anticipated by Muraoka.

Claim 1 includes the features “complementary locking features on the cup holder and primary container for locking the primary container into the cup holder in the serving

configuration of the package". The Office Action asserts that "friction between the . . . walls" of the inner and outer containers of Muraoka's package meet the "complementary locking features" of Claim 1.

This is incorrect. Such an interpretation, at the very least, completely ignores the term "*complementary*" in the claim limitation. It is improper to read a term out of a claim in this manner. According to the American Heritage College Dictionary, "complementary" is defined in relevant part as:

"complementary *adj.* 1. Forming or serving as a complement; completing. 2. Supplying mutual needs or offsetting mutual lacks."

The term "complement" is defined in relevant part as:

"complement *n.* 1.c. Either of two parts that complete the whole or mutually complete each other."

Thus, two features that are "complementary" must be such that they interact with each other in a way that they mutually complete each other. Mere friction between two walls would not be understood by a person of ordinary skill in the art as being "complementary locking features".

Furthermore, the interpretation reflected in the Office Action also ignores the claim term "locking". A person of ordinary skill in the art would not construe friction between walls as being "locking features". The term "locking" clearly connotes something more than mere friction between walls.

Therefore, even if Muraoka's inner and outer containers were to be separated from each other and reversed in orientation (i.e., the outer container nested in the inner container), the inherent friction between the walls of the containers does not constitute the "complementary

locking features” required by Claim 1. Additionally, there are no other features of Muraoka’s containers that would constitute “complementary locking features”. This is understandable, since Muraoka does not intend for his containers to be separated and reversed in orientation.

For at least these reasons, Muraoka does not anticipate or render obvious the package defined in Claim 1.

Dependent Claims 2-10, 14-17, 19-21, and 24 are patentable over Muraoka for at least the same reasons applicable to Claim 1. Additionally, a number of features in these claims are not disclosed or suggested by Muraoka or the other cited references. Some of these features are addressed in the following section on the § 103 rejections.

Rejections Under Section 103

Claims 11, 12, 18, and 27 were rejected under 35 U.S.C. 103(a) as being unpatentable over Muraoka in view of Syverson. Claims 22, 23, and 25 were rejected as unpatentable over Muraoka. Claim 26 was rejected as unpatentable over Muraoka in view of Syverson and further in view of Lucas.

As a first point, since Claim 1 is not anticipated by Muraoka, and since Syverson and Lucas do not contain any teachings that would have led one to modify Muraoka’s container to include the “complementary locking features” of Claim 1 lacking in Muraoka as already pointed out, any combination of Muraoka and Syverson or Lucas would not have suggested the package of Claim 1. Since Claims 11, 12, 13, 18, 22, 23, 25, 26, and 27 depend from Claim 1, then these claims are patentable for at least the same reasons applicable to Claim 1.

Furthermore, the cited references fail to teach other features of the dependent claims in combination with the features of Claim 1. For example, Claim 26 recites “a food product contained in the primary container in the packaged configuration, and a shrink band wrapped

about the top ends of the cup holder and primary container to seal the package and hold the primary container and cup holder together, the shrink band terminating at an upper edge proximate the flange at the top end such that the cup holder remains open at the top end, permitting multiple ones of the packages to be nested inside one another in the packaged configuration.” Claim 26 is directed to an embodiment such as shown in FIGS. 9-11 of the present application.

Lucas does not remotely suggest modifying Muraoka’s container to include a shrink band arranged as claimed. If anything, Lucas would lead one to put the food product in the cup holder so that his lining 14 could then be used to seal the food product. In the package of Claim 26, the food product is contained in the primary container, and thus is covered by the cup holder nested in the primary container. It is not clear how Lucas’s lining could even be applied to such a container. Therefore, it is submitted that the package of Claim 26 is not suggested by Muraoka and Lucas.

Sakakibara likewise does not suggest modifying Muraoka’s container to include a shrink band as claimed. Sakakibara’s packages are not able to nest in each other in the manner called for by Claim 26, because a circular cover 12 of aluminum foil completely seals the open top end of the package. The package of Claim 26, in contrast, “remains open at the top end, permitting multiple ones of the packages to be nested inside one another in the packaged configuration.” The prior art does not suggest the package of Claim 26.

Conclusion

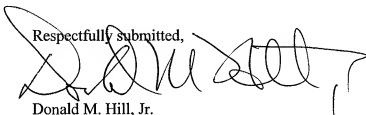
Based on the above amendments and remarks, Applicant respectfully submits that all pending claims are patentable and the application is in condition for allowance.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of

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this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefor (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Donald M. Hill, Jr.", written over the text "Respectfully submitted,".

Donald M. Hill, Jr.
Registration No. 40,646

Customer No. 00826
ALSTON & BIRD LLP
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Charlotte Office (704) 444-1000
Fax Charlotte Office (704) 444-1111

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